

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**RICHARD A. FUNK, INDIVIDUALLY,
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED; AND
RACHAEL FUNK, INDIVIDUALLY,
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED;**

Plaintiff,

V.

NEWREZ LLC,

Defendant.

CIVIL NO. A-22-CV-00301-JRN

ORDER

Judge Nowlin has referred this case to me for mediation. By the agreement of the parties, the mediation will take place on **Wednesday, October 18, 2023, at 9:00 a.m.** on Zoom. The courtroom deputy assigned to my Court will email the parties the Zoom hyperlink prior to the date of mediation.

This notice is sent for two further purposes: (1) to provide the parties with information so you will know what I expect of you in the mediation; and (2) to request information from you, so that I can be fully prepared for the mediation. On the first point, all participants should allocate adequate time for the mediation. Further, counsel are expected to have discussed the prospect of settlement with their client before the mediation. The parties are further directed that after such discussions, they shall, in a good faith attempt at settlement, make at least one settlement offer and counter-proposal after the time of this notice, and no later than one week prior to the scheduled mediation.

With regard to attendance at the mediation, the lead attorney who will try the case for each party must be present. My experience has shown that the lead counsel generally has the best relationship with the client, has the most knowledge about the case, and his or her advice is the most helpful to the client. Further, it is essential to have the parties present at a mediation. For any party that is not an individual, this means a person with full and final authority to bind the party, and with the discretion to exercise that authority without the need to consult with anyone else, including by telephone.

In order for me to prepare for the mediation each party should submit a brief mediation statement. The statement is confidential and will be reviewed only by me. Accordingly, please submit the statement directly to my office (via e-mail, to: laura_thomson@txwd.uscourts.gov). Do not file the statement with the U.S. Clerk's office, and do not serve it on the opposing party. I have access to the complete court file, so you do not need to attach any court filings to your statement; referring to them is fine. Please email these statements no later than **noon on Friday, October 13, 2023**. The statement should contain the following information:

1. A brief statement of your claims or defenses.
2. An estimate of the costs that would be incurred in trying the case.
3. A discussion of the factors that could impede the settlement of the case.

These may be economic factors (*i.e.*, getting the most money possible or paying the least possible), but could also include factors such as fear of setting an adverse precedent, a desire to preserve a business relationship, emotional issues related to the

case, etc. It is helpful for me to understand these different motivating factors to be as effective as possible.

4. A summary of any settlement discussions to date, including the last offers/demands made by each party.

5. A statement of any significant disputes of fact or law that could affect the mediation.

6. A description of any other circumstances that could affect the settlement of the case, and a discussion of any other issues you think I should be aware of prior to the mediation.

7. A list of the counsel and party representatives who will be attending the mediation.

I look forward to working together with you in an effort to reach a mutually agreeable resolution of your case.

SIGNED August 22, 2023.



DUSTIN M. HOWELL
UNITED STATES MAGISTRATE JUDGE